

SUPPORTING BRIEF

I. Interest paid by the City of Detroit on its instalment contract to purchase petitioner's land was exempt under Section 22 (b) (4) of the Revenue Acts.

A. The interest was paid on an instalment contract for the purchase of land.

The parties to the contract expressly provided therein that the contract was to be construed as a contract for the purchase of land at the price awarded by the condemnation jury (R. 17, No. 6).

The contract provided the award should be paid in ten equal annual instalments with interest at $4\frac{1}{4}\%$ instead of within one year from date of confirmation (R. 16) with interest at 5% per annum as required by law. *Campau v. City of Detroit*, 225 Mich. 519.

The contract provided the City could take possession of petitioner's land within 90 days after the award instead of waiting until the award was paid (R. 17).

Finding of fact, number 17 (R. 19) is that the interest was paid by the City pursuant to and in discharge of its obligation under the contract (financing agreement).

B. The contract was an exercise of the borrowing power by the City.

The contract recites that the City desired to widen Woodward Avenue but that the financial condition of the City was not such as to warrant continuation of the proposed condemnation proceedings unless an extension of time for

the payment of the awards could be obtained (R. 15).

Findings of fact No. 10 and 11 (R. 14) are that the City Council's resolution that condemnation proceedings be started was on the condition that the City could obtain credit for the cost of the land from 75% of the property owners.

The findings of fact refer to the contracts as financing agreements (R. 15).

The contract recited that any balances owing on the contract would be tax exempt by the City (R. 17).

By the contracts the City obtained land in exchange for its promise to pay for the land in the future.

C. The above facts bring the case at bar on all fours with the following cases:

Commissioner v. Meyer (1939), 104 Fed. (2d) 155 (CCA 2d);

Kings County Development Co. v. Commissioner, 93 Fed. (2d) 33 (CCA 9th) certiorari denied (1938) 304 U. S. 559;

Norfolk National Bank v. Commissioner, 66 Fed. (2d) 48 (CCA 4th).

and the decision of the Circuit Court of Appeals, Sixth Circuit, in the instant case, is in direct contradiction thereof.

II. The interest paid on a condemnation award should be held to be exempted from income taxation by Section 22 (b) (4).

Under the facts of this case we think it clear that the interest in question was paid not as part of the condemnation

award, but pursuant to and in discharge of the obligation of the "financing agreements".

The Circuit Court appears to have ignored the facts in holding that the interest paid was part of the legal obligation of the condemnation award.

From that premise the Circuit Court reasoned that a condemnation award was not incurred in the exercise of the borrowing power and therefore this interest was not within the exemption of Section 22 (b) (4).

Although some of the lower courts have followed similar reasoning, the Supreme Court has never held that the exemption of interest upon "obligations of a State, Territory or any political subdivision thereof" contained in Section 22 (b) (4) should be narrowed to mean only interest upon obligations incurred in the exercise of the borrowing power. The plain meaning of the statute excludes such a construction.

We submit that the question is of broad enough importance that the Supreme Court should render its final word thereon.

III. If not exempt under Section 22 (b) (4), interest received on a condemnation award is not taxable as interest but only as capital gain, if any gain occurred.

Under the facts of this case this interest was not paid as interest on a condemnation award but as interest on a contract for the purchase of land.

The Circuit Court held this interest was not interest under Section 22 (b) (4) because part of the condemnation award, and yet was interest taxable separately from the award (irrespective of any capital gain appearing). This question whether the interest on a condemnation award is

taxable as interest or as part of capital gain, if any, is now fairly presented by the holding of the Circuit Court. This question was presented to the Circuit Court both in petitioner's brief and in the petition for rehearing.

It would seem that even condemnation award "interest" must be entitled to light somewhere. Either it is: (1) Interest on an obligation of a political subdivision and exempt under Section 22 (b) (4); or (2) It is part of the award and not taxable separately from the rest of the award, but only as part of it, if there be capital gain. It can't be fish and fowl at the same time.

The holding of the Circuit Court that interest on a condemnation award is taxable as interest is directly contrary to the decisions in the following cases:

Seaside Improvement Co. v. Commissioner
(*supra*), 105 Fed. (2d) 990 (CCA 2d);

Commissioner v. Appleby's Estate (*supra*),
123 Fed. (2d) 700 (CCA 2d);

Henry A. Kieselbach v. Commissioner, 44 BTA
279;

Edith Henry Barbour v. Commissioner, 44 BTA
1117.

We therefore respectfully submit that review by writ of certiorari should be granted.

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